

## Volk, Everett

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**From:** Perkins, Erin  
**Sent:** Friday, May 16, 2014 10:53 AM  
**To:** jnorth@mt.gov  
**Cc:** Volk, Everett; Laidlaw, Tina  
**Subject:** Variances/Permitting

Dear John,

On March 3, we sent you an email intending to describe the relationship between variances and NPDES permitting. We retracted that email on March 20. However, we understand that you would still like our explanation of EPA's approach to writing NPDES permits that includes a water quality standards variance. What follows, is our nutshell understanding of these issues. For a more in-depth explanation, we would refer you to the FAQ entitled *Discharger-specific Variances on a Broader Scale: Developing Credible Rationales for Variances that Apply to Multiple Dischargers*, issued by the Office of Water in March 2013, and to the preamble to EPA's *Water Quality Standards Regulatory Clarifications; Proposed Rule*, 78 Fed. Reg. 54517, which was public noticed on September 4, 2013.

Section 301(b)(1)(C) of the CWA requires states to issue NPDES permits that include limitations necessary to meet applicable state water quality standards. A water quality standards variance provides a time-limited interim designated use and associated criteria for the purposes of NPDES permitting under Section 402 of the CWA and for state certifications under Section 401 of the CWA. As a change to water quality standards, water quality standards variances are subject to EPA review and approval or disapproval after consideration of the regulatory requirements in 40 CFR Part 131. Once a variance has been approved by EPA, the criteria associated with the interim designated use are the applicable water quality standards only for the discharger(s) and pollutant(s) specified in the variance. When the State subsequently writes an NPDES permit, it must ensure that it includes water quality based effluent limits (WQBELs) that derive from and comply with water quality standards. 40 CFR 122.44(d)(1)(vii)(A). Because the variance is the applicable water quality standard, the permit writer would develop WQBELs consistent with the criteria and time period specified in the variance.

The grounds for permit objections are defined at 40 CFR 123.44(c), and include the failure of effluent limits to satisfy the requirements of 40 CFR 122.44(d). As long as the variance is validly adopted and approved by EPA, and the WQBELs in the permit comply with the requirements of the variance and the applicable WQS, there would be no grounds to challenge the effluent limitations for the pollutant covered by the variance. EPA would not object to WQBELs included in NPDES permits based on the variance.

Please let me know if you have any questions.

Thanks,  
Erin